

HAROLD G. HOPPE 5049
733 Bishop Street, Suite 2300
Honolulu, HI 96813
Telephone: (808) 528-1903

JOHN R. HILLSMAN 71220
McGuinn, Hillsman & Palefsky
535 Pacific Avenue
San Francisco, CA 94133
Telephone: (415) 421-9292

Attorneys for the Claypool Claimants

UNITED STATES DISTRICT COURT

DISTRICT OF HAWAII

IN THE MATTER OF THE
COMPLAINT OF BLUE DOLPHIN
CHARTERS, LTD. AND TERRY
DONNELLY, AS OWNERS OF THE
VESSEL M/V BLUE DOLPHIN,
O/N 1082212, FOR EXONERATION
FROM AND/OR LIMITATION
OF LIABILITY

) No. CV05-00037 HG BMK
) [3 Consolidated Cases]
)
) **DECLARATION OF SHERYL**
) **CLAYPOOL IN OPPOSITION TO**
) **LIMITATION PLAINTIFFS'**
) **MOTION FOR PARTIAL**
) **SUMMARY JUDGMENT**

)
) Date: December 16, 2005
) Time: 9:00 a.m.
) Courtroom: Aha Nonoi, 4th Floor

)
) The Hon. Helen Gillmor
) Trial date: April 11, 2006
)
)
)
)
)
)

DENNIS CLAYPOOL, individually) No. CV04 00570 HG- BMK
and as Guardian Ad Litem for)
KRISTEN CLAYPOOL, a minor,)
SHERYL CLAYPOOL, SCOTT)
CLAYPOOL, and KRISTEN)
CLAYPOOL,)
Plaintiffs,)
vs.)
CAPTAIN ANDY'S SAILING, INC.,)
BLUE DOLPHIN CHARTERS, LTD.)
and BLUE DOLPHIN DIVING, INC.,)
Defendants.)
_____)

MATTHEW ISHAM, individually) NO. CV04-00559 HG-BMK
and as Guardian ad Litem for)
HAYDEN ISHAM, a minor,)
ROXANNE BEST ISHAM,)
Plaintiffs,)
vs.)
BLUE DOLPHIN CHARTERS, LTD.)
and BLUE DOLPHIN DIVING,)
LTD., CAPTAIN ANDY'S SAILING,)
INC.,)
Defendants.)
_____)

I, SHERYL CLAYPOOL, hereby state and affirm that:

1. I am an adult resident of the State of Arizona and am one of the plaintiffs in this matter. At all times material hereto, I was and still am Dennis Claypool's wife. Dennis and I have three children, Kevin Claypool, Scott Claypool and Kristen Claypool.

2. In July of 2004, Dennis, Scott, Kristen and I traveled to Kauai from our home in Mesa, Arizona, to scatter the ashes of my late mother in accordance with her final wishes.

3. On the morning of July 20th, 2004, the family held a private ceremony for my mother at Poipu Beach. After the ceremony was over, my husband Dennis surprised me with a diamond ring. This ring bore a gem for each member of our immediate family. Dennis gave me this surprise present so I would always remember the occasion.

4. That afternoon, Dennis, Scott, Kristen and I took a scuba and snorkeling cruise to Makol'e Reef on board the tour boat *Blue Dolphin*. This cruise began at Port Allen. After the *Blue Dolphin* reached Makol'e Reef, Dennis and Scott took an introductory scuba class from the tour boat's dive instructor, Matthew Isham, while Kristen and I went snorkeling. Mr. Isham conducted the scuba class in the waters

just to seaward of the *Blue Dolphin*. Kristen and I went snorkeling in the waters just behind or “astern” of the boat.

5. At the moment the *Spirit of Kauai* ran into my husband and Mr. Isham, Kristen and I were snorkeling at the surface of the water when we heard Dennis scream “Help, help, there is an emergency over here. We need help.” I immediately looked up and saw Dennis and another diver struggling in the water a short distance away. My first thought was to swim to my husband’s side, but as I was measuring the distance between us, the *Blue Dolphin’s* captain and crew emphatically ordered everyone back on board. I did not want to interfere with their rescue efforts so I complied.

6. After I was back on board the *Blue Dolphin*, someone handed me a pair of binoculars. I immediately used these binoculars to look at my husband as he was being pulled on board the *Spirit of Kauai*. I could plainly see that he was bleeding profusely and that he was seriously injured. Shortly after that, I heard worried chatter over the *Blue Dolphin’s* radio mentioning “shattered limbs.” When I heard this, I looked down at the diamond ring Dennis had given me earlier that day, felt a rising wave of fear and nausea, and started to pray.

7. After the *Spirit of Kauai* raced out to sea with my husband and Matt Isham on board, the *Blue Dolphin* took Kristen and I back to Port Allen. Throughout this journey, neither Kristen nor I knew where or how Scott Claypool was. We were frightfully worried about both Dennis and Scott, and deeply distressed. No one was able to give us any further information about Dennis' condition. All I could think about was how desperate he had sounded when he screamed for help and how bad his injuries had looked. Although the passengers and crew of the *Blue Dolphin* tried to comfort us, it was obvious that they were all worried too. The ride back to Port Allen was long and agonizing.

8. When the *Blue Dolphin* arrived back at Port Allen, Terry Donnelly, owner of the *Blue Dolphin*, offered to take Kristen and I to the hospital where Dennis had been taken. At that time, all Kristen and I knew was that he was being rushed there by helicopter. This hospital was in Lihue, approximately 30 minutes away. Instead of taking Mr. Donnelly's offer, we drove there in our rental car. As Kristen and I began to pull away from the harbor, we spotted Scott in the passenger seat of another truck. This truck was owned and being driven by the owner of the *Spirit of Kauai*, Captain Andy. Once Scott saw Kristen and I, he got out of Captain's Andy's truck and joined us. Scott had been with his dad out in the water, and on board the

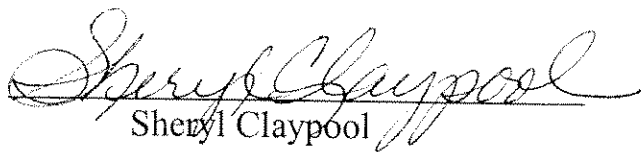
Spirit, and quickly confirmed what Kristen and I already knew; Dennis had been severely injured. Like the rest of us, Scott was visibly upset.

10. Once we arrived at the Wilcox Hospital waiting room, we found blood everywhere and Matt Isham's wife Roxanne crying in a corner. At this time, I overheard someone say that Mr. Isham's leg could not be saved. This information, on top of everything else that had happened, caused me to become very distraught.

11. I hardly slept at all that night, and have suffered from persistent loss of sleep, neck pain, migraine headaches, anxiety and emotional distress ever since.

I have reviewed the foregoing declaration, and can confirm under penalty of perjury under the laws of the State of Hawaii that the facts and opinions contained therein are true and correct, and personally known to me, and that if I were called as a witness herein, I could competently so testify under oath.

Executed on this 29th day of November, 2005, in the City of Mesa, State of Arizona.


Sheryl Claypool